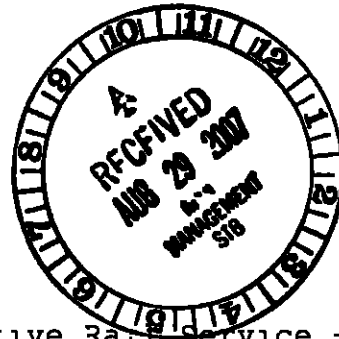


CHARLES H MONTANGE
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SEATTLE, WASHINGTON 98177
(206) 546 1936
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28 August 2007

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20024

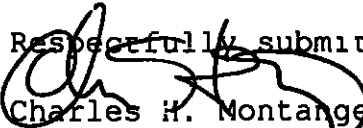


Re: PYCO Industries - Alternative Rail Service -
South Plains Switching, F.D. 34889

Dear Mr. Williams:

Enclosed is a Comment filed on behalf of PYCO and PYCO's alternative service provider (West Texas and Lubbock) in response to a petition filed by incumbent railroad South Plains Switching (SAW) on August 27, 2007, to reopen a switch on the Acme spur. The only business that might require common carrier service on that spur is Acme Brick, which has previously informed PYCO that it no longer has plans to use the spur. PYCO confirmed that Acme is not using the spur for any rail purpose yesterday, and again today. Acme's local staff assures PYCO it will let PYCO know if that changes. SAW is responsible to maintain the switch, but refuses this responsibility. Since the switch is worn out, WTL had no choice but to spike it in order to serve PYCO.

PYCO and WTL do not oppose an order requiring SAW to repair the switch. PYCO and WTL will do so if this Board authorizes them, but the cost (\$17,490 per attached estimate) should be borne by WTL as indicated in our comment, supplied herewith.

Respectfully submitted,

Charles H. Montange
for PYCO Industries, Inc.

Encls.
cc. Counsel per Cert. Serv.

ENTERED
Office of Proceedings
AUG 29 2007
Part of
Public Record

BEFORE THE SURFACE TRANSPORTATION BOARD

PYCO Industries, Inc. --)
Alternative Rail Service -) F.D. 34889
South Plains Switching, Ltd. Co.)

Comment on SAW "Petition to Reopen Switch"

PYCO Industries, Inc. ("PYCO"), joined by West Texas & Lubbock Railroad ("WTL"), makes the following comment on the "petition" filed by incumbent railroad South Plains Switching, Ltd., Co. ("SAW") under 49 U.S.C. 11102(a) to reopen a switch.

SAW did not contact WTL concerning the Acme spur switch; SAW instead filed the referenced petition. SAW's petition rests on two faulty assumptions. First, SAW assumes that WTL (PYCO's alternative rail provider per this Board's decision in this docket served Nov. 21, 2006) is responsible to maintain and to repair the switch. This is wrong. SAW is responsible to repair and to reopen the switch.¹ Second, SAW assumes Acme Brick, the only possible

¹ This Board long ago explained that "SAW has the responsibility to inspect and adequately maintain the trackage used by WTL." PYCO Industries - Alternative Rail Service - South Plains Switching, Ltd., Co., F.D. 34802, served June 21, 2006, slip op. at p. 8. SAW should not have let the switch deteriorate to the point it had to be spiked by WTL in order to be able to serve PYCO in the first place. Once it was spiked (in order to make switches to PYCO), its repair still should be done by SAW.

In corroboration, PYCO notes that it sought a condition in this docket (F.D. 34889) allowing it or its contractors to repair SAW's track (for SAW obviously was not). This Board specifically declined to equip PYCO or its contractors with such authority. PYCO Industries - Alternative Rail Service - South Plains Switching, Ltd., Co., F.D. 34889, served Nov. 21, 2006, slip op. at p. 6, para 5.

In a letter dated June 16, 2005, SAW forbade PYCO or its contractors from making any repairs to SAW trackage. SAW has not

shipper on the Acme spur, requires rail service on it. This is not the case. Acme is no longer receiving or sending cars on the spur.² Since SAW's petition is thus doubly bogus, PYCO believes it most likely filed to distract the Board from legitimate petitions for relief on related topics filed by PYCO.³

PYCO has no objection to an immediate order from this Board directing SAW forthwith to repair and to reopen the switch. PYCO would welcome such an order as recognition of SAW's duty to maintain and to repair the track.

OTHER INFORMATION

rescinded that letter.

² Acme Brick, the sole "shipper" identified by SAW on the spur in question, informed PYCO long ago that it was no longer shipping on the spur. Acme's local office confirmed this again to PYCO on August 27, 2007. PYCO understands that Acme now receives rail shipments at another location, and that anything coming in for a switch to Acme over SAW is a mistake. Acme actually purchased its adjacent portion of the spur from SAW by deed dated 20 June 2005, with SAW retaining no rights (deed attached). There are no other shippers on the spur. The switch thus appears unnecessary for common carrier purposes. If by some chance Acme did require a car, the switch at that time could be spiked to Acme in about one half hour, but then it would have to be spiked back to PYCO, which requires daily service. Since spiking costs some money (\$400 per spiking according to WTL), and since the switch is worn out and can only be safely used if spiked, one presumably would wish to avoid it unless necessary to serve a shipper.

³ For example, PYCO has repeatedly expressed concern about lack of maintenance and repair by SAW concerning the SAW trackage used by WTL to provide alternative rail service to PYCO. PYCO has a motion pending in this docket (cover letter dated August 6, 2007) to permit WTL and PYCO's contractors to inspect and to repair relevant trackage due to SAW's failure to discharge its duties.

WTL has obtained an estimate (attached) from Martin Railroad Construction in the amount of \$17,490.00 to repair the switch. If SAW will not make the repair (SAW's past practice has been to refuse), and if this Board will authorize the repair (at SAW's expense), then WTL or PYCO through an outside contractor will make the repair. Since the switch is not needed to provide any common carrier service, WTL and PYCO feel it inappropriate to make the repair for SAW unless and until SAW agrees to pay the expense, but SAW so far denies all responsibility.

Since there is no shipper on the spur, and since SAW is failing in its obligation to repair, the only reasonable course to provide service to the existing shippers on SAW lines is to spike the switch. SAW's objections to alternative service on this ground are rampant bootstrapping by SAW; it cannot complain of a condition it contrives to create, especially when no shipper is adversely affected. SAW should do something it does not do: reasonably cooperate to meet shipper common carrier needs. In this case, SAW should repair its trackage and stop filing spurious motions.

SAW makes some other claims about compensation for alternative rail service. PYCO has replied to those in prior pleadings. PYCO reiterates that there is nothing unlawful about this Board's November 21, 2006 order authorizing alternative service. Moreover, SAW did not seek judicial review of that decision and it is now

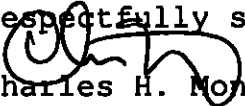
final. SAW does not set forth grounds justifying reopening.

CONCLUSION

PYCO does not object to SAW's petition to reopen the switch, so long as it is understood that the liability to do so rests with SAW. Thus (a) either SAW should fix the switch (without disrupting service to PYCO or further bothering this Board with spurious petitions), or (b) this Board should authorize WTL to repair the switch at the expense of SAW. If this Board chooses the latter, PYCO requests that the Board at the same time order SAW immediately to pay the estimated repair cost (\$17,490) to WTL.

Per WTL's counsel, WTL joins in this comment.

Respectfully submitted,

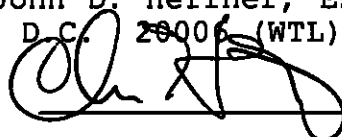

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Seattle, WA 98177
(206) 546-1936
Counsel for PYCO Industries, Inc.

Of counsel:
Gary McLaren, Esq.
Phillips & McLaren
3305 66th ST., Suite 1A
Lubbock, TX 79413
(806) 788-0609

Attachments (repair estimate and SAW to Acme deed)

Certificate of Service

I certify service of the foregoing by express service, next day delivery, this 28 th day of August, 2007, upon Thomas McFarland, Esq., 208 South LaSalle St., Suite 1890, Chicago, IL 60604-1112 (SAW), and upon John D. Heffner, Esq., 1750 K Street, N.W., Suite 350, Washington, D.C. 20006 (WTL).



MARTIN RAILROAD CONSTRUCTION

1401 Inler
LUBBOCK, TX 79416

EIN # 75-2087288

PHONE 806/784-0846

FAX 806/784-0868

Cell 806/777-6194

BID QUOTE

SAW Switch repair

SERVICE FOR West Texas Lubbock Railway
Hans Grosstueck
SAW Main-Line
PH 806-637-8323 FAX 806-637-8074

SEND TO West Texas Lubbock Railway
Hans Grosstueck
SAW Main-Line
PH 806-637-8323 FAX 806-637-8074

Salesperson Eldon Martin		Date 8/23/2007	
Invoice number NA		Service number N/A	
Cost Estimate AS PER AGREEMENT		Date of completion N/A	

QUANTITY	DESCRIPTION OF WORK PERFORMED	RATE	AMOUNT
	SCOPE OF WORK Repair switch from heel blocks to switch point Haul equipment Remove and replace all ties under switch points Replace LH & RH switch points, including all connector rods Remove and replace 1-33' pcs of 85# rail, stock rail Regage and spike rail to proper readings Install Ballast Line, level and tamp to proper measurements <u>Material & Equipment used in above scope is to be supplied by WTLC and delivered to location by WTLC.</u>		
2	16' x 6" switch points	\$1,100 00	\$2,200.00
2	#1 and #2 connecting rods	\$200 00	\$400.00
1	1 85# 33' pc Relay rail	\$450 00	\$450.00
25	Ballast per ton	\$22 00	\$550.00
1	Spikes per keg	\$150 00	\$150.00
12	9' new ties	\$50 00	\$600.00
2	head block ties	\$70 00	\$140.00
	TOTAL		\$4,490.00
280	LABOR	\$22 50	\$6,300.00
4	Service trucks & trailers per day	\$350 00	\$1,400.00
4	Industrial Air Compressor per day	\$250 00	\$1,000.00
40	4 WD Backhoe per hour	\$45 00	\$1,800.00
1	Call out fee	\$2,500 00	\$2,500.00
	TOTAL		\$13,000.00
	TOTAL COST		\$17,490.00
Due upon receipt of Invoice -			
Martin Construction charges 1 1/2% per month on unpaid balance			
Please sign & date for approval			
AS PER AGREEMENT: \$13,000 (labor and equipment) IS TO BE MADE WITHIN 10 DAYS OF FINAL INVOICE			

After Filing Return to ACME BRICK, 2821 WEST 7TH STREET, FT WORTH, TEXAS 76107

COPY



QUITCLAIM DEED

**THE STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §**

KNOW ALL MEN BY THESE PRESENTS:

THAT the SOUTH PLAINS SWITCHING LTD. CO., a Texas Limited Liability Company, of the County of Lubbock, State of Texas, (hereinafter "Grantor") for and in consideration of the sum of TEN DOLLARS AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, in hand paid by the grantee herein named, the receipt and sufficiency of which is hereby acknowledged, has QUITCLAIMED, and by the presents does QUITCLAIM unto ACME BRICK, A BERKSHIRE HATHAWAY COMPANY., of 2821 West 7th Street, Ft. Worth, Texas 76107, (hereinafter "Grantee"), all of its right, title and interest in and to the real property situated in Lubbock County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (hereinafter "the Property").

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the Property and premises unto Grantee, its successors and assigns forever, so that neither Grantor nor its legal representatives or assigns shall have, claim or demand any right or title to the Property, premises or appurtenances or any part thereof.

This conveyance is made without warranty of any kind, express or implied and no covenant of warranty shall be implied from the use of any word or words herein contained, including without limitation any warranty that might arise by common law, or the warranties in Section 5.023 of the Texas Property Code (or its successor). By the acceptance of this deed, Grantee takes the Property "AS IS". Grantor has not made and does not make any

representations as to the physical condition, layout footage, expenses, zoning, operation, or any other matter affecting or related to the Property, and Grantee hereby expressly acknowledges that now such representations have been made. Grantor makes no other warranties, express or implied, of merchantability, marketability, fitness or suitability for a particular purpose or otherwise except as set forth and limited herein. Any implied warranties are expressly disclaimed and excluded.

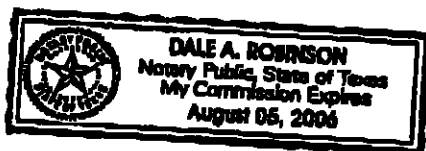
EXECUTED on this the 20th day of June, 2005.

South Plains Switching, Ltd., Co.

Larry Wisener
By: LARRY D. WISENER, PRESIDENT

THE STATE OF TEXAS §
§
COUNTY OF LUBBOCK §

This instrument was acknowledged before me on this the 20th day of June, 2005 by LARRY D. WISENER, President of South Plains Switching, Ltd. Co., a Texas Limited Liability Company, on behalf of said company.



Dale A. Robinson
NOTARY PUBLIC, STATE OF TEXAS

Dale A. Robinson
Printed Name of Notary

My Commission Expires: August 05, 2006

EXHIBIT "A"

METES AND BOUNDS DESCRIPTION of an approximate 1.26 acre tract located in Section 7, Block B, T. T. R. R. Survey in Lubbock, Lubbock County Texas Being Further Described as follows:

BEGINNING at a point in a westerly projection of the South right of way line of East 23rd Street at the Northeast corner of an adjacent Four Hundred Ninety-seven Thousandth (0.497) acre tract of land that is described in deed recorded in the Lubbock County, Texas Deed Records in Volume 6240 at Page 340 being also the Northwest corner for this described tract of land;

THENCE East along the projection of the South right of way line of East 23rd Street a distance of Twenty-six and Fifty-eight Hundredths Feet (26.58') for the Northeast corner of this tract which point bears South a distance of One Thousand Three Hundred Twenty-two and Five Tenths Feet (1,322.5') and West a distance of Forty Feet (40') from the Northeast corner of said Section 7;

THENCE South a distance of One Thousand Two Hundred Seventy-five and Twenty-seven Hundredths Feet (1,275.27') to the Southeast Corner of this tract being also a point of then Easterly projection of the North right of way line of East 26th Street;

THENCE West along the Easterly projection of the North right of way line of East 26th Street a distance of Sixty Feet (60.0') to a point in the East right of way line of Avenue A;

THENCE North along the East right of way line of Avenue A a distance of Five Hundred Twenty-five and Twenty-seven Hundredths Feet (525.27') to the Southwest Corner of that Four Hundred Ninety-seven Thousandth (0.497) acre tract of land previously identified;

THENCE East along the South line of the adjacent Four Hundred Ninety-seven Thousandth (0.497) acre tract a distance of Nineteen and Forty-two Hundredths Feet (19.42') to the Southeast Corner of the adjacent Four Hundred Ninety-seven Thousandth (0.497) acre tract.

THENCE North along the common line of the adjacent Four Hundred Ninety-seven Thousandth (0.497) acre Tract N00°15'03"E a distance of One Hundred Sixty-two and Thirty-nine Hundredths Feet (162.39');

THENCE Northeasterly along a curve to the right and along the common line of the adjacent Four Hundred Ninety-seven Thousandth (0.497) acre tract, said curve having a radius of Eight Hundred Sixteen and Twenty-nine Hundredths feet (816.29') a chord distance of Seventy-eight and Twenty-nine Hundredths feet (78.29') and a chord bearing of N03°55'58"E to a point;

THENCE N00°09'43"E along the common line of the adjacent Four Hundred Ninety Seven Thousandth (0.497) acre tract a distance of Three Hundred Sixty-eight and Four Tenths Feet (368.4');

THENCE Northeasterly along a curve to the left and along the common line of the adjacent Four Hundred Ninety-seven Thousandth (0.497) acre tract, said curve having a radius of Eight Hundred Eighty-one and Three Tenths Feet (881.3'), a chord distance of Thirty-four (34.0') and a chord bearing of N00°55'01"E to the Northwest Corner of this track and the place of beginning.

